



POLICE DEPARTMENT

October 18, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Henry Lafontant
Tax Registry No. 906600
Brooklyn Special Victims Squad
Disciplinary Case No. 86200/10

The above-named member of the Department appeared before Assistant Deputy Commissioner John Grappone on August 10, 2011, charged with the following:

1. Said Detective Henry Lafontant, Bronx Special Victims Squad, while on-duty, on or about and between September 8, 2008 and December 26, 2008, in Bronx County, did fail to promptly voucher a DNA sample, in that said Detective did take a DNA sample on September 8, 2008, but did fail to prepare a Property's Clerk's invoice for the sample until December 26, 2008.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT

P.G. 218-01 INVOICING PROPERTY – GENERAL PROCEDURE

2. Said Detective Henry Lafontant, Bronx Special Victims Squad, while on-duty, on or about and between September 8, 2008 and December 26, 2008, in Bronx County, did fail to promptly submit a DNA sample for analysis, thereby causing a delay in a criminal prosecution.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT

3. Said Detective Henry Lafontant, Bronx Special Victims Squad, while on-duty, on or about December 26, 2008, in Bronx County, did fail to properly submit DNA evidence for analysis, in that a submission from said Detective did fail to include pedigree information and was not properly sealed with evidence tape, as required.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

COURTESY • PROFESSIONALISM • RESPECT

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FORENSIC EVIDENCE MANUAL, PAGES 12, 13

4. Said Detective Henry Lafontant, Bronx Special Victims Squad, while on-duty, on or about and between September 8, 2008 and December 26, 2008, in Bronx County, did fail to prepare a DD5 report after collecting DNA evidence, as required.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED
CONDUCT

FORENSIC EVIDENCE MANUEL, PAGE 9

5. Said Detective Henry Lafontant, Bronx Special Victims Squad, while on-duty, on or about and between September 8, 2008 and December 26, 2008, in Bronx County, did fail to maintain activity logs, as required.

P.G. 212-08, Page 1, Paragraph 1(1) (C) (5) ACTIVITY LOGS

The Department was represented by Daniel Maurer, Department Advocate's Office, and the Respondent was represented by Philip Karasyk, Esq.

The Respondent, through his counsel has entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent joined the Department in February 1994 and worked patrol in the 24 Precinct. In 1998, he began a six-year stint with the Narcotics Division, during which time he was promoted to detective in 2000. In 2006, he was assigned to the Bronx Special Victims Squad, Special Victims Division, and spent four years there before he was transferred to his current command, the Brooklyn Child Abuse Squad, as a result of

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the incident in this case. He has received training in the collection of DNA samples and he has collected DNA samples.

In early 2008, Respondent arrested Person A for rape based on a complaint made by Person A's ex-girlfriend. Respondent recalled going to the hospital where she was and initiating the investigation. He explained that sensitivity was needed in dealing with the victim because of the nature of the crime and he used his skills to obtain the necessary information. A "rape kit"¹ was administered by the hospital. The victim knew her attacker and identified the perpetrator as Person A, her ex-boyfriend.

During the investigation, Respondent learned that Person A had previously been arrested and because of the nature of Person A's previous arrest, his DNA was in the Department's DNA database. After Person A's arrest, the case was closed and signed off on by a supervisor. At this point, the Respondent testified, his responsibilities regarding Person A was over.

About six months later, an assistant district attorney, Person B (now Person B), contacted him. They had worked together on a case in the past and she addressed him by his first name. She said that she needed a favor, that she wanted a buccal swab taken from Person A. Respondent testified that he would not normally do this, particularly when the DNA is already on file. He explained this to Person B but she told him she wanted an "ironclad" case. Because of their professional working relationship, he agreed to do it.

On September 8, 2008, Person B got an "order to produce" and Respondent obtained a swab from Person A. Respondent took the swab to his command and secured it in his desk.

¹ Sexual Offense Evidence Collection Kit

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He did not make a memo book entry nor did he voucher the swab. At the time, he believed the case was closed. He now knows that he should have prepared a report.

With regard to the swab, Respondent stated, "Because of my negligence, the evidence was in the drawer, it had fallen out of sight and out of mind."

He was reminded of the swab when Person B called him. He told her he still had the evidence. At that point, he vouchered it and submitted it to the lab. When asked why he did not turn the DNA sample in immediately, Respondent stated, "I wish I could...if I can turn the clock back, we would not be sitting here. It was a grave error on my part and as a detective."

Respondent testified that he has over 500 arrests in his career, approximately 300 misdemeanors and 200 felonies. As a patrol officer, he made a bribery arrest which led to his assignment in the Narcotics Division. He recounted that two weeks after leaving the Police Academy, he walked in on an armed robbery at a McDonald's restaurant on Canal and Lafayette Streets and three individuals were arrested.

Respondent noted that he lives in [REDACTED] and had a short, inexpensive commute to the Bronx. As a result of this incident, he is now in working in Brooklyn.

Respondent explained that at the time of this incident, he was in a busy unit where he handled 60 to 80 cases a year. He learned that Person A ultimately pled guilty and was sentenced to four years in prison.

On cross-examination, Respondent agreed that he received training in evidence collection and taking buccal swabs. He agreed that Person A had been identified as the rapist. Respondent did not agree, however, that the victim was a child and stated that

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while he did not know her exact age, the victim was an adult. Respondent did not know anything about a child being left alone in the apartment with Person A.²

At the time he arrested Person A, Respondent was aware that Person A's DNA was already in the DNA database. He did not recall the extent of his discussion with Person B about the need for the swab. He said Person B had spoken with her supervisor about getting the swab. He had no knowledge as to whether there had been any conversation with defense counsel about this. He said the reason she wanted to get the swab was to make her case "airtight."

Respondent agreed that Person B contacted him about six months after the arrest. The only time he took a swab from Person A was on September 8. He believed he was carrying about 20 cases at the time, a majority of them being cases of Rape in the First Degree. He explained that the patrol officer is usually responsible for vouchering the rape kit. He did not recall on how many of his cases he had taken a DNA swab. He agreed that Person A had to be swabbed again because the sample he took did not have sufficient evidence to conduct a DNA analysis.

Respondent agreed that he put the swab in his desk drawer, which was locked. The desk was shared by other members of the team, who had access. He agreed that he understood the importance of maintaining the integrity of evidence and chain of evidence. He denied that his negligence compromised the case but did agree that it compromised that evidence.

²

The Assistant Department Advocate was under the impression that the case involved a child being raped by the mother's ex-boyfriend, Person A, to whom she had given an apartment key. The Assistant Department Advocate later conceded that this was a misimpression based on his misreading of the file. What the file actually said, he stated, was that the adult victim had just returned home from bringing her child to school, so that the child was not present when the crime occurred.

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On re-direct examination, Respondent noted that the rape kit had retrieved sperm from the rape and that the victim knew the perpetrator. He also stated that he had been recommended for a promotion in grade by his commanding officer and that he had been awarded a Commander's Day by his supervisor in Brooklyn.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222, 240 (1974). The Respondent was appointed to the Department on February 28, 1994. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled guilty to the five specifications in this case. The Department has asked for a penalty involving the loss of 30 vacation days. Respondent has admitted to having been negligent in this matter but asks for a lesser penalty. In order to determine an appropriate penalty, it is necessary to examine the circumstances of this case.

Respondent, while working in the Bronx Special Victim Squad, investigated a rape allegation. He met the victim at the hospital and a rape kit was prepared and properly vouchered. The alleged rapist was the victim's ex-boyfriend, Person A. Respondent arrested Person A, who had prior contacts with the criminal justice system. As a result of those prior contacts, Person A's DNA was on file. The police case completed, Respondent properly closed the investigative file.

Sometime later, the assistant district attorney, Person B, asked essentially for a favor. She wanted a swab taken of Person A's DNA. Respondent had worked cooperatively with

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Person B in the past and they were on a first name basis. Respondent agreed to take the sample. Respondent acknowledges that rather than vouchering it and submitting it promptly to the laboratory he put it in his desk and forgot about it. He expressed his distress at this failure and could not explain it beyond stating that he had a significant case load. When Person B called again, he belatedly vouchered the swab and submitted it for analysis.

The Department represents that as the result of Respondent's failure to promptly submit the sample for vouchering and testing, a trial date scheduled for December 2008 had to be cancelled. In March 2009 Person A pled guilty and accepted a sentence of 4 years in prison.

Consequences constitute a significant factor to consider in assessing penalty. The Department has a right to expect a higher level of diligence where the consequences of negligence are greater. If, for instance, a detective were to fail to voucher a rape kit resulting in the loss of evidence directly needed to prove a crime, that is a very serious consequence and the penalty for the failure should be high. Reading the specifications on their face, that is what one would be led to believe occurred here.³ But, in fact, as outlined above, that is not at all what occurred. All of the evidence necessary to prove the case against the criminal, Person A, had been properly gathered and turned over to the assistant district attorney. The police case had properly been closed.

The sample that was not properly vouchered here was in a fashion "icing on the cake." A swab of Person A's DNA could only have value on the issue of identification.

³ During his opening statement the assistant Department advocate claimed that the rape kit had not been submitted to the medical examiner [should be the Police Laboratory] however after the error was pointed out by counsel for Respondent the assistant Department advocate conceded that the rape kit was properly handled and the charges relate only to the swab taken from Person A.

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Person A was the victim's former boyfriend, so identification was apparently not an issue. Person A had prior arrests and, as a result, his DNA was already on file. Person A was convicted and sentenced to prison apparently based, at least in part, on the work Respondent did.

To be sure, once Respondent agreed to take the swab, he should have properly vouchered it and had it tested immediately. He is guilty of the multiple failures outlined in the specifications related to the handling of this swab. But the consequences of these failures appear to have been minimal. Indeed, given the resolution of Person A's criminal case, it would appear that Respondent's failure had no substantive impact at all on the criminal case.

Respondent is a 17-year veteran of this Department. He has no prior formal disciplinary actions. He has made a very significant number of arrests in his career with the Department, (in his testimony he actually understated the number of arrests he is credited with see confidential memorandum attached hereto). He gave undisputed testimony that he carried a large caseload at the time of this incident. This appears to be a singular error and not in character for Respondent.

Considering all of these factors, a penalty of the loss of 10 vacation days is recommended.

APPROVED
JUN 26 2012
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully Submitted,

Martin G. Karopkin
Martin G. Karopkin
Deputy Commissioner - Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE HENRY LAFONTANT
TAX REGISTRY NO. 906600
DISCIPLINARY CASE NO. 86200/10

In his last three annual evaluations, Respondent received an overall rating of 4.5 “Extremely Competent/Highly Competent,” 4.0 “Highly Competent,” and a 4.0 “Highly Competent. He has been awarded one medal for Excellent Police Duty. [REDACTED]
[REDACTED]
[REDACTED]. Respondent has a total of 627 arrests—307 felonies, 308 misdemeanors and 12 others.

Respondent has no prior formal disciplinary record.

For your consideration.


Martin G. Karapkin
Deputy Commissioner – Trials